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U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
UNITED STATES OF AMERICA, : 18-cr-00530-GRB-1
: :
- versus - : U.S. Courthouse
: Central Islip, New York
: :
CHRISTOPHER MCCOY, : July 25, 2019
Defendant : 11:00 AM
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE GARY R. BROWN
UNITED STATES MAGISTRATE JUDGE

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1 THE CLERK: Calling Case 18-cr-530, United
2 States of America v. Christopher McCoy.

3 Counsel, please state your appearance for the
4 record.

5 MS. GATZ: Good morning, your Honor.
6 Lara Treinis Gatz for the United States.

7 THE COURT: Good morning, Ms. Gatz.

8 MR. SAPONE: And good morning, your Honor.

9 Edward Sapone, and my partner, William Petrillo
10 for Christopher McCoy, ready for sentencing.

11 THE COURT: All right. Everyone's ready to
12 proceed?

13 MR. SAPONE: Yes.

14 THE COURT: Okay. I have a few preliminary
15 questions before we get to it. The first of which is
16 this, at the plea, which I recall quite well, we had a
17 long discussion about whether or not the defendant needed
18 to register as a sex offender. It was in the plea
19 agreement, and then I believe during the plea, we agreed
20 to pull it out because counsel thought no.

21 MR. SAPONE: Yes.

22 THE COURT: It looks like that might not be the
23 case. In other words, the probation department thinks
24 that registration's required.

25 So I guess the best thing to ask you at this

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1 moment, counsel, is based on that, would your client want
2 to withdraw his guilty plea?

3 MR. SAPONE: So he would not, your Honor. If I
4 could be heard on this issue, I would appreciate it.

5 THE COURT: Help yourself.

6 MR. SAPONE: Sure. So it's our understanding
7 that there is no analogous statute in New York State, and
8 so as long as Mr. McCoy remains in New York State,
9 there's no registration under SONAR, because there's no
10 analogous statute. We believe that.

11 We've checked into that, probation looked into
12 it, and so did we, and that's the state of affairs. The
13 question is, we were just, and we were just discussing it
14 in the hallway, let's say Mr. McCoy moves, he moves to
15 Massachusetts, for argument's sake --

16 THE COURT: Uh-hum.

17 MR. SAPONE: -- then what we're suggesting is
18 he lets that jurisdiction know about the conviction, and
19 let's them weigh in on whether or not they think he
20 should be registered. And I think that's where the
21 parties are at on this issue.

22 THE COURT: Ms. Gatz?

23 MS. GATZ: Your Honor, I'm going to ask Ms.
24 Langone speak to that. She's researched this pretty
25 thoroughly, and I think she can explain to the Court

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1 what's going to happen via statute in New York, and --

2 THE COURT: Ms. Langone?

3 MS. GATZ: -- which I think is of primary
4 concern to the Court.

5 THE COURT: You can sit. Use the mic because
6 we're making a record.

7 MS. LANGONE: Okay. Yes. So there is the
8 federal SONAR guidelines, the statute that requires that
9 individuals with certain convictions notify the states in
10 which they reside, and let the state determine. There is
11 not currently a federal registry. So it's left to each
12 state to determine whether or not a conviction requires
13 registration in that state.

14 Under the federal SONAR, the conduct falls
15 under a conviction that would require him to make that
16 notification to the State. So in New York State, we will
17 send the notification of the conviction while he is on
18 supervised release. However, there is not a statute in
19 New York State that is analogous to the offense of
20 conviction, so more than likely, New York State is going
21 to notify us that this is not registerable in New York
22 State.

23 However, each state has their own list of
24 offenses, and should he decide to move, because of that
25 federal SONAR, he will be required to notify the

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1 jurisdiction where he resides, and let them determine if
2 in their jurisdiction, it is a registerable offense.

3 THE COURT: Okay. I am hearing something else
4 here, too, which may be I don't think this is my
5 determination to make, but I don't want your client
6 walking away with the impression that there's been some
7 decision that he doesn't have to register. It sounds to
8 me like someone else will make that decision, this state
9 or another state, right? I want him to be clear that a
10 collateral consequence, and it's a serious consequence,
11 of this plea and conviction, may be registration, so I am
12 going to offer you the opportunity once again, to
13 withdraw the plea if that's what you want.

14 MR. SAPONE: So we respectfully decline that
15 offer, and I think we're on the same page, your Honor.

16 THE COURT: Okay. Just so long as he is clear.

17 MR. SAPONE: Thank you.

18 THE COURT: Because it's a serious matter. I
19 don't want him walking away with the wrong impression.

20 MR. SAPONE: Yes.

21 THE COURT: Okay.

22 MR. SAPONE: We appreciate it, your Honor.
23 Thank you.

24 THE COURT: Okay. And while I will address
25 this later in the proceeding, I have a preliminary issue

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1 regarding restitution. My understanding is that the
2 victim did not file a registration -- a victim impact
3 statement, but may have filed a civil action, if I read
4 that correctly.

5 Ms. Gatz, where are on that?

6 MS. GATZ: Your Honor, victim notification was
7 made as required. The victim has declined to participate
8 in today's proceedings, and has not submitted, as I
9 understand it, a victim notification to -- excuse me, a
10 victim statement to the probation department or the
11 Court.

12 THE COURT: So probation advises I could
13 schedule a restitution hearing later, but there's a
14 Second Circuit case from 1994, the last century, not
15 recent, but it says you can't do that. You have to do it
16 at the time.

17 MS. GATZ: We're not pursuing restitution in
18 this matter, your Honor.

19 THE COURT: Okay. So there's no sort of
20 presumptive number, there's nothing like I'm just going
21 to leave that alone, yes?

22 MS. GATZ: No, your Honor. That's correct.

23 THE COURT: Do you agree?

24 MR. SAPONE: We agree. Thank you.

25 THE COURT: All right. I mean, restitution is

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1 mandatory but since I have no information on that, I
2 cannot make a determination.

3 MR. SAPONE: Correct.

4 THE COURT: Okay.

5 MR. SAPONE: Thank you.

6 THE COURT: All right. Those are my
7 preliminary issues. Let's get started.

8 First of all, counsel, has your client
9 reviewed, and discussed the pre-sentence report?

10 MR. SAPONE: We have, your Honor.

11 THE COURT: All right. Mr. McCoy, is that
12 right?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Any other questions? Any other
15 issues we need to resolve about that fact, in other
16 words, that you had ample time to talk about it?

17 MR. SAPONE: We've had ample time, and there
18 are no issues, your Honor.

19 THE COURT: Good. Are there any issues in
20 dispute concerning the sentencing guidelines?

21 MR. SAPONE: No, your Honor.

22 THE COURT: So the guidelines range is if I am
23 recalling, I don't have it in front of me, 29. We're
24 agreed on that?

25 MR. SAPONE: One moment, your Honor.

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1 THE COURT: I know it's criminal history
2 category one, but I just want to make sure I've got the
3 right number.

4 MR. SAPONE: Yes, and that's after acceptance,
5 your Honor.

6 THE COURT: Right. So for --

7 MR. SAPONE: 29, CHC 1.

8 THE COURT: Right. No other factual issues
9 need to be resolved regarding that. We're agreed it's a
10 29 at level 1.

11 MR. SAPONE: Correct.

12 THE COURT: And that suggests a guidelines
13 range of 87 to 108 months.

14 MR. SAPONE: Yes, so in a post-Booker world,
15 the advisory guidelines range is that this is a
16 misdemeanor with a one-year cap.

17 THE COURT: Okay. Got it. Any other legal
18 issues relating to the sentence that we need to discuss?

19 MS. GATZ: No, your Honor.

20 MR. SAPONE: No, your Honor.

21 THE COURT: Okay. So I am going to agree then
22 with the probation department's determination that and
23 with the consent of the parties, that it is a level 29,
24 with an 87 to 108 advisory range. So counsel, I have
25 reviewed the significant submission you made, right? I

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1 think it's 108 pages, if I have that right, something
2 like that.

3 MR. SAPONE: You know, we're not lost for
4 words, your Honor.

5 THE COURT: No, no, no, I got you. There's a
6 lot of letters. It's -- I read everything. What would
7 like to do now?

8 MR. SAPONE: So I would like to be brief, if I
9 may, and I appreciate that your Honor took the time to
10 read all that.

11 I am -- we are struck by the volume of letters.
12 They speak to Mr. McCoy's history and characteristics
13 quite well, much better than counsel ever could. I just
14 wanted to sort of reiterate that we sentence people, not
15 crimes. We sentence not just people, but the whole
16 person. Mr. McCoy, I would like to state publicly, has
17 been an excellent father to his three children, ages 9,
18 7, and 5.

19 I was touched by the fact that he was a
20 chaperone at many school trips, volunteered at the
21 school, coached T-ball and when the kids got older,
22 Little League. Drew little pictures for them when they
23 went to school in the morning; just an excellent father.

24 We obviously are well aware of the misconduct,
25 and never to be condoned, but again, we look at the whole

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1 person and just very briefly would like to mention that
2 for more than ten years, aside from the instant offense,
3 did honorably serve our community. He made more than 250
4 good arrests, and received numerous awards and
5 commendations.

6 I'll end with this, your Honor, and I'm
7 thinking about United States v. Gall, where Mr. Gall had
8 engaged in what the Court -- the U.S. Supreme Court
9 described as self-rehabilitation. That is, no court had
10 ordered Mr. Gall to do anything, and on his own, he
11 sought to rehabilitate himself. And here, Mr. McCoy has
12 done similarly.

13 He went to numerous doctors, mental health
14 professionals on his own. He sought and received
15 treatment. Your Honor saw the reports from, I think it
16 was Dr. John Dougherty, as well as licensed clinical
17 social worker, Mark Williams. There are numerous quotes
18 in the memorandum about that.

19 And so I appreciate your time. I'm here for
20 any questions but I think we'll, at this point, rest on
21 our submission.

22 THE COURT: And counsel, it's a fine
23 submission. I mean this is a difficult case. It's a
24 little puzzling to me to get so many letters given the
25 nature of the conduct, right, but getting letters from

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1 friends, and spouse, and family -- well, not spouse,
2 family, colleagues, others, acquaintances of fellow
3 officers, attesting to his good character.

4 How do I reconcile that with what happened,
5 right?

6 MR. SAPONE: Because I think that -- and this
7 is a movie I might've seen a decade ago, and in the movie
8 it said, I don't know if it was Shawshank Redemption, not
9 to draw any parallels between this case and that,
10 sometimes good people do not so good things. I think
11 that we are complex and a man could be in his middle age,
12 right, a middle-aged man in his middle years, and live a
13 lifetime of good work, and hard work, and be a great
14 father, and love his family, many of whom are here in
15 court, his Dad, his brothers, and then there's a hiccup
16 in life, and there's misconduct, and you scratch your
17 head, and you wonder how, why, how could that have
18 happened? Sometimes there are answers, and sometimes
19 there are not.

20 But a man is not defined by his mistakes. I
21 would like to think that we could look at the whole
22 person, and so those people are not wrong when they say
23 the things they say about Christopher because he is all
24 those things, and more, notwithstanding the misconduct.

25 THE COURT: Yes. I don't want to get into too

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1 many details about his sort of mental health history, and
2 so forth, except to say that one of the elements that the
3 licensed social worker presented in the report is lying
4 to friends and colleagues about sexual activity, so --
5 and keeping -- what was the phrase -- keeps the secret
6 from all the world, right?

7 MR. SAPONE: Yes, so perhaps --

8 THE COURT: It kind of helps me understand why
9 I'm getting lots of fine, you know, attestations about
10 his good character from people whom he presumably told
11 none about any of this, fair?

12 MR. SAPONE: Yes, your Honor. It is, and
13 you're correct to pick up on that, and what I would say
14 is if people in the community who have a problem,
15 whatever it may be --

16 THE COURT: Right.

17 MR. SAPONE: -- it could be an addiction, it
18 could be a mental health issue, it could be anything, if
19 they turn to their friends and family, and say hey, I'm
20 in a bad way, all right, I'm in a dark place, I need
21 help, then maybe we'd all be all the better for it. But
22 unfortunately, usually attendant to the problem is the
23 masking, and they're not stepping forward, and seeking
24 the help they need before the act was committed. If they
25 had done that, we wouldn't be here, and perhaps Mr.

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1 Petrillo and I wouldn't have a job.

2 THE COURT: Got it. And then the other
3 question that the social worker report raises in my mind,
4 is one of the causal factors that are identified is the
5 flirtatious behavior of the complainant.

6 Now I don't know of any evidence of that. Is
7 there evidence of that?

8 MR. SAPONE: So your Honor, I -- you know,
9 there's a phrase in our business, "blaming the victim",
10 and --

11 THE COURT: Yeah.

12 MR. SAPONE: -- my law firm doesn't do that. I
13 also don't micro manage mental health expert's reports.

14 THE COURT: I hear you.

15 MR. SAPONE: And so, you know, the expert wrote
16 what he wrote. That's not my statement. That's not Mr.
17 Petrillo's statement.

18 THE COURT: Well, that second part is
19 problematic, right, because this report is based on
20 comprehensive interviewing of a -- he calls him Chris all
21 the time, he uses his first name for mental health
22 reasons that are -- allude me, but I have to believe that
23 that information came from your client because there's no
24 other source for it. Isn't that fair?

25 MR. SAPONE: You know, I don't know what Mr.

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1 Williams did in his extensive investigation. I know he
2 spoke not only to Christopher but to many family members,
3 you know? Mark Williams doesn't just speak to the
4 defendant. He goes out there. He pulls news articles.
5 I don't know what he did, your Honor, but --

6 THE COURT: All right, so --

7 MR. SAPONE: -- counsel is not making that
8 statement.

9 THE COURT: Does this rise to the level of
10 diminished capacity, I guess is my question?

11 MR. SAPONE: No, it does not.

12 THE COURT: Okay. Is there a ground, and you
13 were very careful properly to say that they're advisory
14 guidelines but is there -- so but we used to call it a
15 departure, is there a departure ground here?

16 MR. SAPONE: No, and so you know my
17 understanding of modern day sentencing goes something
18 like this. We calculate the appropriate sentencing
19 guidelines. Those guidelines are merely advisory. The
20 Court takes a look at those guidelines, and then
21 determines a sentence that meets the parsimony clause,
22 that is a sentence that is sufficient, but not greater
23 than necessary to achieve the goals of sentencing as set
24 forth in 18 USC Section 3553(a)(2), and sentences within
25 the statutory minimum and maximum, calculating those

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1 guidelines, looking at the seven factors of 3553(a).

2 Here, the statutory mandatory minimum is zero.

3 The maximum is one year.

4 THE COURT: Uh-hum.

5 MR. SAPONE: And so the guidelines, in effect,
6 are one year because that's the statutory max.

7 THE COURT: Right, of course, but the question
8 I have for you, are you asking for something less than
9 that because I thought the agreement --

10 MR. SAPONE: The plea agreement would preclude
11 that, and I respect Ms. Gatz.

12 THE COURT: Okay.

13 MR. SAPONE: We've had many cases together. I
14 respect her professionalism.

15 THE COURT: Okay.

16 MR. SAPONE: I would never do such a thing.

17 THE COURT: Okay. All right. Thank you.

18 MR. SAPONE: Yes.

19 THE COURT: All right, then. I'm obviously
20 considering all the 3553(a) factors, including the
21 guidelines in reaching a conclusion here. Are there any
22 other comments you would like to make on behalf of the
23 defendant?

24 MR. SAPONE: So your Honor the other issue is
25 whether or not the defendant would like to make a

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1 statement.

2 THE COURT: I will get there in a second, but
3 yeah, sure.

4 MR. SAPONE: Here -- yes, your Honor -- here,
5 it's my understanding as you correctly point out, that
6 the claimant is suing the municipality, and so on the
7 advice of counsel, given that lawsuit, with your
8 permission, he's going to respectfully remain silent at
9 this point.

10 There are some housekeeping issues, which I
11 think I will reserve for the end. So for now, in terms
12 of argument at sentencing, we're not.

13 THE COURT: Okay. Mr. McCoy, I just want to
14 make sure that you're clear on the fact that you're free
15 to speak to me now if you would like.

16 You understand that, yes?

17 THE DEFENDANT: Yes, your Honor. Yes.

18 THE COURT: But you would rather pass, and
19 that's okay if you want to pass but it's up to you.

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Okay. All right. Ms. Gatz, any
22 comments would you like to make before I impose sentence?

23 MS. GATZ: Yes, your Honor. Obviously, you've
24 read all of the papers and you're very familiar with this
25 case, and you understand this is complex, and a

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1 complicated case. A simple set of facts, so-to-speak,
2 but a complicated case nonetheless.

3 The defendant was originally charged with a
4 felony, which I think bears some discussion here, and I
5 want the Court to understand that the victim's
6 credibility had no play in the decision to offer a
7 misdemeanor in this matter. It was a legal decision, not
8 a factual decision. And the legal decision was because
9 the traditional definition of force that is used in these
10 types of cases, this is a civil rights case, and it's a
11 deprivation of a victim's civil rights, meaning the
12 rights would be free from unwanted sexual contact.

13 In a case like this, the way to prove force is
14 beyond a reasonable doubt to a jury, the facts here,
15 coupled with the law, did not rise to that level, and I
16 think it's important to understand that.

17 This is a case of a disparate power dynamic
18 between two people. This is case in which the defendant
19 used his authority to get the victim alone into a
20 particular location.

21 And even in a power dynamic, the victim in this
22 case felt pressured, and felt she had no other choice but
23 to engage in the sexual contact.

24 And I believe the Court hit the nail on the
25 head in terms of the expert reports, too. It was that

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1 certainly the expert report of Mr. Williams did blame the
2 victim, describing her as flirtatious, and basically
3 indicating that the defendant "resist sexual temptation".
4 And I don't blame the defendant for that because I have
5 no understanding or reason to believe that he's the one
6 that presented those facts. I don't know where they came
7 from but I certainly object to their use, and I think
8 that the expert sorely missed the mark in this report.

9 I think from my perspective, after
10 investigating this case, I think the defendant had a
11 warped view of his encounters with people. He certainly
12 thought that this wanted this but she didn't, and I think
13 that her actions spoke to that, and he declined to
14 recognize that she did not want to do this, and he forced
15 her, and not in a traditional sense. There was no gun to
16 her head. There was no you better do this or else, there
17 was a lot of unspoken communication between a police
18 officer, and arrestee, where this woman felt she had no
19 choice but to comply with what the defendant wanted.

20 And I also -- I must say also, the other expert
21 missed the mark, too in frankly, from my view, blaming
22 his wife for her actions that somehow contributed to what
23 the defendant did, and I find that offensive as well. I
24 think both the experts missed the mark in this case. And
25 certainly that's no knock on either the defendant or

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1 counsel, who have conducted themselves in a very
2 professional way, in a very complicated and important and
3 stressful, and embarrassing case.

4 So I certainly am not knocking the defendant or
5 their lawyers. I think they've conducted themselves in a
6 very appropriate manner, given the complex, and
7 complicated case that this turned out to me.

8 I certainly think that this resolution is the
9 appropriate resolution to this matter, and I asked the
10 Court to impose a sentence that all of the parties have
11 agreed upon.

12 Can I just have one moment, your Honor?

13 THE COURT: Sure.

14 (Pause)

15 MS. GATZ: Nothing else, your Honor. Thank
16 you.

17 MR. SAPONE: Your Honor, if I may?

18 THE COURT: Sure.

19 MR. SAPONE: So I have no response to what Ms.
20 Gatz said at all. I have another issue which is Joe
21 McCoy, Christopher's father, is here in court and his two
22 brothers, and they had asked me could they make some
23 brief comments to the Court, and what I said to them was
24 sometimes judges say hey, I got 50 letters, and I read a
25 voluminous sentencing memorandum, I have enough

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1 information to impose sentence. Other times, judges say
2 sure, step right up. They had asked me to ask your Honor
3 permission, and it's up to the Court.

4 THE COURT: If I am going to say -- answer
5 both, which is I have plenty of information but if they
6 would like to be heard, I would be pleased to hear from
7 them. So they can step up to the podium.

8 MR. SAPONE: Great. And this is not a case,
9 your Honor, where I've prepared with them. There's no Q
10 and A. They just want to make a statement.

11 THE COURT: Yes, yes, absolutely, please.

12 MR. SAPONE: Okay. And I would just ask that
13 you identify yourself for the record.

14 THE COURT: Thank you. Step over to the
15 podium. There's a microphone there, and that's how we're
16 making a record, okay?

17 MR. D. MCCOY: Yes.

18 THE COURT: Who are you, sir?

19 MR. D. MCCOY: I am David McCoy.

20 THE COURT: Okay.

21 MR. D. MCCOY: Chris' brother. Good day, your
22 Honor. I'm Chris' younger brother David. Whew. I've
23 looked up to Chris my entire life, as a role model. He's
24 hard-working, inspirational and always been there for me
25 when I needed him. So much so that I made him the

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1 godfather of my son, James.

2 Through God, I look for answers to how to help
3 my brother regain some sense of normalcy in his life.
4 I've watched him suffer for over two years now, and
5 remorsefully struggle to get by day to day. He's lost
6 friendships, families, and his career. He will always be
7 my big brother, an outstanding father, and an honorable
8 man.

9 And I know that he will right all his wrongs,
10 and regain his life, and I ask for any leniency possible
11 for my brother, to allow him to raise his children to be
12 productive members of our society, which I know they will
13 become.

14 Chris, I love you, more now than ever. I will
15 always have your back, and you're always going to get
16 through this with the help of your friends and family,
17 and become a better version of the great man you already
18 are. Thank you, your Honor.

19 THE COURT: All right. Anyone else like to be
20 heard?

21 MR. J. MCCOY: Good morning, your Honor. I'm
22 Joe McCoy. I'm Chris' oldest sibling. Thank you for the
23 opportunity to speak on behalf of my brother, Chris.

24 Growing up in our house, Chris was always a
25 caring, happy, funny boy, always sensing when someone

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1 could use a laugh or a hug to cheer them up. As years
2 went by, I watched my caring, witty, little brother grow
3 into a determined, dedicated, mature, hard worker who
4 gave his all to be a successful student, athlete and
5 person.

6 I also saw that Chris was always more concerned
7 about the success of others above his own. This was
8 evident by his four years as a walk-on on the Clemson
9 University football team. He knew that he would never
10 see the field during a game, but gave everything to that
11 team as part of the practice squad to help them prepare.

12 In all aspects of his life, Chris has been a
13 team player, doing his best for the team, whether it be
14 his classmates, fellow police officers, or his family to
15 succeed.

16 Chris is always there to lend a hand, at
17 whether helping you move, paint a room, check in on an
18 ailing family member, but if you ask any of Chris'
19 friends, they would have similar stories of how he makes
20 time to help or care for those close to him.

21 Chris is a great uncle to his three nieces and
22 five nephews. He always makes time to attend birthday
23 parties, and special events all over the tri-state area.
24 He patiently listens to Little League stories, and is
25 never too busy for a water balloon fight, or a backyard

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1 obstacle course.

2 I know that my own children are devastated by
3 the thought of not having Uncle Chris around, and I
4 cannot imagine how his own children will handle it.
5 Chris is a wonderful father. He's incredibly patient,
6 loving, and compassionate with his three children. There
7 have been many times over the last nine years when I've
8 learned how to be a better Dad by watching my younger
9 brother Chris.

10 His children are everything to him. He is
11 completely and totally involved in every aspect of their
12 lives, and has been since the day his oldest son was
13 born. Hawk, Liam, and Emmy (ph.) need their father in
14 their lives, and they're better off for having him as a
15 Dad.

16 After Chris' arrest two-and-a-half years ago,
17 he could have easily become angry, and bitter, and fallen
18 apart but he didn't. Instead, Chris did everything he
19 could to keep his family together. He used his time
20 productively, spending as much time as possible with his
21 children and his wife, helping our parents out whenever
22 he could, and picking up whatever jobs he could to help
23 his family, whereas many men would've let this experience
24 destroy them. Chris has truly tried to grow from this
25 experience, and I'm very proud of him.

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1 I would ask the Court to take this into
2 consideration today when you sentence my brother. Thank
3 you.

4 THE COURT: Anyone else?

5 MR. SAPONE: Yes, his father, your Honor.

6 MR. JOE MCCOY: It just takes me a minute to
7 get there, your Honor.

8 THE COURT: Take your time.

9 MR. JOE MCCOY: Good morning, your Honor. My
10 name is Joe McCoy. I'm the father of Christopher,
11 Joseph, Brian, David and Katie (ph.). Let me start by
12 saying that no father could be prouder of his children
13 than I have been.

14 Chris' actions in this particular case are a
15 complete aberration, and quite frankly, I had a hard time
16 understanding how. Chris has always been a wonderful
17 person. As your Honor read in the reports, he suffers
18 from OCD, and we used to joke with him about that all the
19 time. When he went to Clemson, his classmates used to
20 pick on him by moving his pencils in different
21 directions. They'd turn his hangars around, and it would
22 drive him crazy.

23 But he was always there for everybody. He was
24 a great son. I can't say more than that. A couple of
25 years ago, I did notice something that was mentioned

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1 peripherally in the report, and I would just like to
2 mention it. Chris started having, I guess what the
3 psychologist called panic attacks. I took him to the
4 hospital a number of times where he couldn't breathe. He
5 was checked in overnight. Everybody thought he was
6 having a heart attack.

7 I see from the psychiatrist's report that this
8 could be a contributing factor, and you know Chris just
9 had that particular problem.

10 But getting back to the present situation,
11 Chris has three of the greatest children that you can
12 possibly have. I'm blessed with ten grandchildren, and
13 I'll tell you what, I love each and every one of them.
14 They're fantastic.

15 Chris' Hawk, who is 9, Liam, who is 7, and
16 Emmy, who is 5, they absolutely, positively rely on their
17 father to keep the family together, to take care of them,
18 to give them guidance. I honestly, truthfully, your
19 Honor, under oath if you want me, state that I don't know
20 how those children will survive should Chris be
21 incarcerated or go away.

22 I am here as a plea for them, for Chris, and I
23 would just like to ask a question, it's a rhetorical
24 question obviously, and that is, how is society served by
25 incarcerating a person who has made a mistake? This is

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1 America. Land where people get second chances. Land
2 where people get opportunities. And incarcerating Chris,
3 in my opinion, and obviously it's a biased and slanted
4 one, serves no purpose. It hurts three innocent children
5 severely. Chris -- and I say this as far as that
6 sentence goes -- this started in March of 2017. For two-
7 and-a-half years Chris has suffered with the Sword of
8 Damocles banging over his head. He's been unable to get
9 a permanent position. He's become a day laborer to get
10 money wherever he could to help the family.

11 And you know, that -- I don't understand how
12 two-and-a-half years under this intense pressure, this
13 emotional stress, and everything else, could not be taken
14 into account by the Court as some sort of time served, if
15 you will.

16 In any event, that's what I hope, and I just
17 mention to your Honor that I wrote down the definition of
18 justice out of the legal dictionary and it says, and I
19 quote, "The proper administration of the law. The fair
20 and equitable treatment of all individuals under the law,
21 fairness."

22 Please, your Honor, take into consideration
23 everything that was in that memorandum. My son made a
24 huge mistake. No getting around that. But the entire
25 family is there to help him, and we know that Chris will

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1 become again a valued member of society, and his
2 community. So please take that into consideration, your
3 Honor. Thank you.

4 THE COURT: Thank you, sir.

5 Anything further, counsel?

6 MR. SAPONE: No, your Honor, thank you.

7 THE COURT: Anything further from the
8 government?

9 MS. GATZ: Your Honor, I appreciate Mr. McCoy's
10 comments. He's been at every court appearance and he's
11 clearly the kind of father everybody should have but to
12 answer his rhetorical question, there's two things the
13 Court should be thinking about; general deterrence,
14 sending the message to other police officers or other
15 people in this type of power disparity, you can't act
16 this way. It doesn't matter that you're having problems.
17 It doesn't matter that you are suffering from issues.
18 You can't treat people this way.

19 And specific deterrence; the report seem to say
20 this is never going to happen again. I don't have a
21 crystal ball. I can't tell but I think that the idea of
22 spending time in jail is a significant deterrence to
23 future conduct by this defendant. Thank you.

24 THE COURT: Anything further, counsel?

25 MR. SAPONE: Just some housekeeping matters

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1 whenever the Court is ready for me.

2 THE COURT: Have at it.

3 MR. SAPONE: All right. So in terms of --
4 well, I think I should wait until you're done pronouncing
5 sentence.

6 THE COURT: Okay.

7 MR. SAPONE: Yes.

8 THE COURT: The pretrial or the probation
9 department gave me a sentencing recommendation. You've
10 seen that counsel, yes?

11 MR. SAPONE: We've talked about it in the
12 hallway, your Honor.

13 MS. GATZ: I think we should -- if the Court --
14 probation doesn't give these to the parties unless you
15 order it, so I would appreciate if you could order that
16 now, so we could have them.

17 THE COURT: Yeah, why don't you give them to
18 the parties? Take a few minutes to review it. I have --
19 okay, let me say something very clearly. I have reviewed
20 it. It's, I guess part of my thinking though I am not
21 specifically relying on it, but if you review it, there
22 may be a few shortcuts we can take in terms of different
23 aspects of this. So why don't you give that to them,
24 please?

25 MS. LANGONE: Your Honor, we would need to just

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1 specify, do you want the parties to have the entire
2 recommendation or just the conditions that we recommended
3 be a part of the term of supervision?

4 THE COURT: Give them the entire
5 recommendation.

6 MS. LANGONE: The entire --

7 THE COURT: If it's something you've given me,
8 I think they should see it.

9 MS. LANGONE: And your Honor also, they're --
10 in reviewing for sentence today, there was one condition
11 that we would like to request that we failed to include
12 in the recommendation. I brought the language up for
13 that condition, as well, for everyone to review. It
14 would be that during the period of his supervision, that
15 he be subject to the computer and internet monitoring
16 program, as he contacted the victim via text messages
17 following the offense, and we have also recommended that
18 he not be permitted to contact the victim in any way.
19 This would be the manner --

20 THE COURT: That's in the document, so that
21 that part is okay, yes?

22 MS. LANGONE: Yes, that's all in the document.
23 The only thing that we omitted from --

24 THE COURT: You want computer monitoring.

25 MS. LANGONE: The computer monitoring.

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1 THE COURT: Okay. Please provide the document
2 to counsel. I'll be back momentarily, and we can proceed
3 from there.

4 MS. LANGONE: All right.

5 (Off the record)

6 THE COURT: We're back on.

7 Counsel, did you have sufficient time to review
8 that, and did you review it with your client?

9 MR. SAPONE: Yes, your Honor.

10 THE COURT: Did you have any issues as a result
11 of that document?

12 MR. SAPONE: Yes, your Honor.

13 THE COURT: All right. Have at it.

14 MR. SAPONE: All right. So just that I am
15 clear, we didn't get advance notice of it, which is fine
16 because we did speak in the hallway. I did read it now.
17 I went over it with Mr. McCoy. We've had sufficient
18 time.

19 THE COURT: Counsel, stop right there.

20 MR. SAPONE: Yes.

21 THE COURT: If you want an adjournment for a
22 different day or this afternoon, I will do anything you
23 want. You tell me.

24 MR. SAPONE: We've had plenty of time.

25 THE COURT: Okay.

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1 MR. SAPONE: Okay. So my view point is this,
2 your Honor, as to the computer monitoring prong of the
3 supervised release, it says here on page 4, the last
4 paragraph --

5 THE COURT: Uh-hum.

6 MR. SAPONE: -- "As Jane Doe was victimized in
7 the instant offense, and was then subject to text
8 messages from the defendant, referencing the sexual
9 contact, a special condition of supervision has been
10 recommended, prohibiting the defendant from contacting
11 Jane Doe in any manner."

12 We agree with that completely, and so
13 therefore, we're asking your Honor not to find it
14 necessary that in addition to that, that there's computer
15 monitoring because it's obvious to us that the reason for
16 the computer monitoring condition is because Mr. McCoy
17 contacted her by text message.

18 But to deal with that, he's not allowed to
19 contact her in a manner. He didn't use a computer in
20 this case. This is not a case where there's any
21 traditional misconduct, if you will, that would trigger
22 the computer monitoring. So we think it's inappropriate
23 in this case, and it could be dealt with by the paragraph
24 I just read. All right, so -- yes.

25 THE COURT: Ms. Gatz?

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1 MS. GATZ: Your Honor, I support the probation
2 department's recommendation. I think if they feel it's
3 necessary to supervise him for a year, I think that the
4 Court should impose that. Thank you.

5 THE COURT: Okay.

6 MS. LANGONE: Your Honor? I'm sorry, if you
7 want further explanation as to why we are --

8 THE COURT: I'm good.

9 MS. LANGONE: Okay.

10 THE COURT: Thank you.

11 Go ahead.

12 MR. SAPONE: All right. And so there's a
13 condition here that he be polygraphed, and my only
14 concern with that is that, you know, we've had a lot of
15 experience with polygraphers, and you know it depends on
16 a lot of factors. We think it's unreliable, and again,
17 not necessary.

18 There are plenty of conditions here -- plenty
19 of conditions to monitor him, and we don't agree with the
20 polygraph aspect of it.

21 One moment, your Honor.

22 THE COURT: Hang on one second. Counsel, what
23 do you say about that?

24 MS. LANGONE: Your Honor, the polygraph in and
25 of itself is not used to form the basis of a violation.

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1 It is a way to foster truthful communication about the
2 subject matter that's being dealt with in treatment.

3 As it was alluded to earlier, there is some
4 question as to whether or not there's a truthful account
5 of sexual conduct. Polygraph is a means to further that
6 discussion. And again, a violation in and of itself is
7 not brought before the Court because of a failed
8 polygraph. More likely than not, it will lead to further
9 discussion and further communication to find out the
10 cause of the failure, which may or may not trigger a
11 violation to be considered before the Court. Failing the
12 test alone is not the reason why we would come back
13 before the Court.

14 THE COURT: Okay. Anything else, counsel?

15 MR. SAPONE: Yes, your Honor. So on the first
16 page of the recommendation, the last paragraph --

17 THE COURT: Uh-hum.

18 MR. SAPONE: -- "The defendant shall not obtain
19 a position of employment which allows him to have custody
20 or control of over others, adults or minors."

21 We think that that is vague. I don't really
22 know exactly what that means. I think it's a case by
23 case basis as to whether or not let's say a certain
24 managerial position would equate to custody or control.
25 I think that a cleaner way to do it, your Honor, is that

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1 he shall not be permitted to become employed as a
2 security guard or a security officer, which we would
3 consent to.

4 THE COURT: Are we looking for law enforcement
5 there; is that the point?

6 MS. GATZ: Yes, your Honor, but I think what --
7 I think if you want to modify it to that language, that's
8 fine but I think the idea would be to check with pretrial
9 or probation before he takes employment, and we can
10 discuss it at that point. So that's fine to modify it in
11 that fashion, but I do think that before taking
12 employment, he's going to have to run that by his
13 probation officer --

14 THE COURT: Okay.

15 MS. GATZ: -- to determine the suitability of
16 the job, your Honor.

17 THE COURT: Right. I know, I understand. I am
18 just running through my head, what are the variations,
19 right? Is it if we say law enforcement or law
20 enforcement-type position, does that cover what we're
21 looking for or not really?

22 MS. GATZ: One moment.

23 (Pause)

24 MS. GATZ: That's fine, your Honor.

25 THE COURT: Okay. And of course, to the extent

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1 that that condition applies, the probation department is
2 not stopped from bringing anything forward to the Court
3 that may -- that we're not thinking of today, right? In
4 other words, we got this kind of job, and it may not be
5 great, and we can revisit it then. Fair enough?

6 MR. SAPONE: We can always take things up in
7 the future.

8 THE COURT: Okay, good. All right.
9 Anything further?

10 (Pause)

11 MR. SAPONE: No, thank you, your Honor, and
12 thank you for all the time you've put into this.

13 THE COURT: No, problem.

14 Ms. Gatz, anything else?

15 MS. GATZ: No, your Honor, thank you.

16 THE COURT: All right. Then I am ready to
17 impose sentence. Like every criminal case, this case is
18 tragedy for everyone involved. The conduct was
19 reprehensible. The impact on the families -- on the
20 victim was unimaginable. The impact on this defendant's
21 family, extended family, some who are here today, is
22 terrible, but that's always the case.

23 So I am going to talk about the -- what I've
24 considered in connection with the -- let's start with the
25 period of incarceration. So counsel raised a lot of

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1 issues concerning the defendant's state of mind,
2 background, character. I've considered all of those
3 things.

4 If this were a case where the pending charge
5 were a felony, the decision would be much more difficult.
6 However, in this case, the guidelines do represent
7 something the Court must consider, and I think are a fair
8 starting point.

9 Is this a case that would warrant a departure
10 from the guidelines? No. Would it warrant a variance, I
11 think that's the new phrase, from the guidelines? Maybe.
12 But what I can be certain of is it certainly wouldn't
13 warrant a variance that would go below the statutory
14 maximum of this case. So in other words, we're not going
15 to reduce him from 87 to something less than 12 months.

16 So I find that a one-year period of
17 incarceration is appropriate, in considering all of the
18 factors under 3553(a). I believe that is sufficient,
19 though not beyond the requirements of that section. It
20 is not greater than what is required to specifically --
21 particularly achieve specific and general deterrence
22 here.

23 That will be followed by one year of supervised
24 release, and that period will be governed by the
25 conditions contained in the probation department's

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1 recommendation with the exception of the computer
2 monitoring. I agree with counsel that the situation here
3 does not warrant computer monitoring. I think it's for a
4 different type of situation and case, but I do agree with
5 probation that polygraphy may be an appropriate tool in
6 this case, particularly given the level of deceit that
7 went on, including right up to the time of, I think,
8 deceit with his treatment therapist, and so forth.

9 I am not imposing restitution because there is
10 no victim impact statement here. Of course, that will be
11 without prejudice to the victim pursuing whatever rights
12 she may or may not have in parallel civil proceedings.

13 I am not imposing a fine due to the -- due to
14 many factors, but including the defendant's obligations
15 to his young children, which the family has brought to my
16 attention, and so I think any spare income he has will be
17 used for those obligations.

18 There's a \$25 special assessment that must be
19 imposed at this time. And we will alter the language of
20 the position of employment issue to cover law enforcement
21 or law enforcement-type positions, as well as the fact
22 that probation can bring any other issue -- jobs that may
23 be an issue to the attention of the Court.

24 Is there anything I neglected to cover?

25 MS. GATZ: No, your Honor.

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1 THE COURT: Counsel?

2 MR. SAPONE: No, your Honor. But if I may at
3 this time, ask your Honor that Mr. McCoy be -- that your
4 Honor recommend FCI-Otisville has a camp, and the reason
5 I am asking for that recommendation, it's not binding on
6 the BOP, but they appreciate Court's recommendations, is
7 it's the only facility that's close enough where he might
8 be able to see his three children. If he's designated
9 anywhere else, his wife will not take the children to see
10 him. And so they would be deprived of a very, very
11 strong relationship with their father, who is the one
12 that wakes them up in the morning, puts them to bed at
13 night. It's going to be very traumatic to begin with.

14 I don't want to see a situation where he
15 doesn't see them for a year. So my request is that your
16 Honor recommend the camp at FCI-Otisville.

17 And the next thing, and last thing, your Honor,
18 is that he be permitted to self-surrender to whatever
19 facility the BOP designates him to, anytime after October
20 18th, and that's because the children are going to start
21 school, and he wants to be there just for the beginning,
22 to get them, you know, ingrained in the school year, and
23 then right after that, he's willing to drive himself or
24 his wife or father will drive him directly to the
25 facility.

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1 MS. GATZ: No objection to any of those
2 requests.

3 THE COURT: Okay. So I will recommend FCI-
4 Otisville, recognizing, of course, that it's not binding
5 on the Bureau of Prisons, but I will recommend that in
6 light of the defendant's strong family ties, and he will
7 self-surrender then sometime on -- on or after October
8 18th.

9 MR. SAPONE: So it would be on or after October
10 19th -- after October 18th, so --

11 MS. GATZ: I think they like us to pick a date.
12 Can we say October 19th?

13 MR. SAPONE: Which is a Saturday, so maybe we
14 could just do the 21st or --

15 THE COURT: Okay.

16 MS. GATZ: Monday, the 21st is fine.

17 THE COURT: Lawyers doing math, that never goes
18 well. Okay, October -- Monday, October 21st, he will
19 self-surrender to the designated facility. If they have
20 not yet designated a facility, he'll surrender to the
21 marshals and take it from there.

22 MR. SAPONE: Great. And then your Honor, I
23 just want to be clear about something. So your Honor --
24 and thank you, had recommended FCI-Otisville, but I know
25 that they have a camp, and a low, could your Honor

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1 recommend the camp? A low facility, which is a --

2 THE COURT: What is a "low"?

3 MR. SAPONE: So it goes --

4 THE COURT: L-O-W, are you saying?

5 MR. SAPONE: Yes, camp, low, medium, high
6 security.

7 THE COURT: I don't --

8 MR. SAPONE: And so --

9 THE COURT: -- think I'm in a position to make
10 that call.

11 MR. SAPONE: Okay.

12 THE COURT: Because I don't know what those
13 things mean, so I will leave that to the Bureau of
14 Prisons.

15 MR. SAPONE: FCI-Otisville is plenty. Thank
16 you.

17 THE COURT: Okay. Good. Now is there a waiver
18 of appeal?

19 MS. GATZ: That's a very good question, your
20 Honor.

21 THE COURT: Well --

22 MS. GATZ: I believe so. Let me just look at
23 the agreement. I don't remember.

24 (Pause)

25 MS. GATZ: Yes, your Honor. The defendant

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1 waived his right to appeal if the Court sentenced him to
2 12 months or below.

3 THE COURT: Okay. So sir, there is a waiver of
4 the appeal in the agreement but you should explore with
5 your attorney whether or not you would like to appeal the
6 sentence. There may be a possibility, I never know about
7 these things, but I do know if you don't appeal within a
8 very, very limited amount of time, you will certainly
9 give up that right.

10 So you should talk to your attorney about any
11 rights you may have.

12 Anything else we should cover, for defendants?

13 MR. SAPONE: No, and thank you, your Honor.

14 MS. GATZ: Your Honor, does the pretrial
15 supervision continue until October 21st?

16 MS. GATZ: Absolutely.

17 THE COURT: Okay, thank you. Of course. That
18 should've gone without saying but I'm glad you said it,
19 so thank you.

20 MS. GATZ: Thank you.

21 THE COURT: All right. We're adjourned.

22 (Matter concluded)

23 -o0o-

24


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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 31st day of October, 2019.


Linda Ferrara

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